



Docket No.: 10961206.(1509-304)

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of

Farhad Fuad ISLAM *et al.* : Confirmation No. 2816

U.S. Patent Application No. 09/892,289 : Group Art Unit: 2623

Filed: June 26, 2001 : Examiner: Harun M. Yimam

For: AGENT-ENABLED REAL-TIME QUALITY OF SERVICE SYSTEM FOR AUDIO-VIDEO MEDIA

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

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COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria VA 22313-1450

Sir:

This paper is submitted in reply to the Final Office Action mailed April 5, 2006

Applicants respectfully request review of the final rejections of claims 2-6, 8-10, 12-15 and 17-31 as manifested in the Final Office Action. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal in compliance with 37 CFR 41.31 and the fee set forth in 37 CFR 41.20(b)(1).

The review is requested for the reasons stated on the attached sheets.

## REASONS

The following clear errors are found in the Examiner's rejections.

1. The applied reference of *Shaffer* (U.S. Patent No. 5,673,253) fails to teach or disclose each and every element of independent claim 2, namely, the step of "**using the software agent to issue instructions to the additional end device**," for the reasons advanced in the December 27, 2005 Amendment, at page 11, the last two paragraphs and page 12, the first paragraph, which are incorporated by reference herein.

The overall system disclosed by *Shaffer* is summarized in attached *Exhibit A* which is an annotated version of FIG. 1 of *Shaffer*. Specifically, *Shaffer* discloses, at best, a network node 10 (column 4, line 51, and Final Office Action at paragraph 2) which is connectable, via an external trunk 38 (column 5, lines 36-38) and a network (X in *Exhibit A*), to a second network node (column 5, line 32 and Y in *Exhibit A*). Telecommunications sessions (Z in *Exhibit A*) between units 18-22 of first network node 10 are intranodal sessions (*Shaffer* at column 5, lines 29-34). Telecommunications sessions (W in *Exhibit A*) between an unit 18-22 of first network node 10 and an unit of the second network node are internodal sessions (*Shaffer* at column 5, lines 29-36).

The Examiner reads the *Shaffer* user unit 18 connected to network node 10 on the claimed additional end device (Final Office Action at page 5, line 12). Applicants respectfully disagree, because unit 18 does not correspond to the claimed additional end device; it is the *Shaffer* second network node Y that might be readable, if at all, on the claimed additional end device as explained above with reference to *Exhibit A*.

The Examiner further argues that that *Shaffer* teaches using a software agent to issue instructions to the additional end device at column 5, lines 50-59 and column 6, lines 10-14. Applicants respectfully disagree, because the *Shaffer* "software agent" does not issue any instructions to the user unit 18 and/or the second network node Y. Rather, the *Shaffer* "software

agent" controls only the switching fabric 36 (column 6, line 10-14) which is not readable on the claimed additional end device.

Accordingly, Applicants respectfully submit that *Shaffer* fails to teach or disclose the above highlighted limitation of independent claim 2.

2. Still with respect to independent claim 2, *Shaffer* also fails to teach or disclose the step of "**using a further software agent located in the additional end device to perform a bit rate control operation in response to the instructions issued by the software agent,**" for the reason advanced in the December 27, 2005 Amendment, at page 12, the second paragraph, which is incorporated by reference herein. The Examiner has not responded to this argument in the Final Office Action.

The Examiner's rationale (Final Office Action at page 5, lines 1-6 from bottom) is improper, because (1) unit 18 of *Shaffer* is not readable on the claimed additional end device, and (2) the *Shaffer* bandwidth negotiation is neither disclosed, taught nor suggested to be handled by a further software agent residing in one of the "additional end device" 18.

Accordingly, Applicants respectfully submit that *Shaffer* fails to teach or disclose the above highlighted limitation of independent claim 2.

3. The rejections of independent claim 12, as well as dependent claims depending on claims 2 and 12, are clearly erroneous for at least the reasons advanced with respect to claim 2.

4. The *35 U.S.C. 103(a)* rejection of claims 17-26 as being obvious over *Shaffer* and *Downs* (U.S. Patent No. 5,689,800) is clearly erroneous for the reasons advanced in the December 27, 2005 Amendment, at page 13, lines 2-23, which are incorporated by reference herein.

With respect to the Examiner's argument found in Final Office Action at page 3, lines 1-5 from bottom, i.e., the claimed invention may be made by those skilled in the art, the Examiner is

kindly reminded that

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination." *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990) (emphasis added). A statement that modifications of the prior art to meet the claimed invention would have been " `well within the ordinary skill of the art at the time the claimed invention was made' " because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). *See MPEP*, section 2143.01

5. The rejection of claim 20 is clearly erroneous, because *Downs* teaches that the encoding node (additional end device) will increase processing (service quality) to provide exactly enough data for a larger window at the decoding node (end device), contrary to the claimed invention which requires the opposite, i.e., reducing the service quality at the encoding node.

6. The rejections of claims 28-29 are clearly erroneous, because *Shaffer* and *Downs* singly or in combination fail to disclose, teach or suggest all limitations of independent claim 28.

Specifically, the applied references, especially *Downs*, fail to teach or suggest one additional end device which performs all of the following

- (a) "receiving and decoding the bit streams of multiple video and/or audio signals placed on the network by the other additional end device or devices,"
- (b) "synthesizing the decoded multiple video and/or audio signals to generate a single compound video and/or audio signal," and
- (c) "placing a bitstream representing the synthesized single compound video and/or audio signal on the network."

The *Downs* at column 4, lines 6-16 cited by the Examiner in the Final Office Action, page 11, discloses, at best, only step (a). The reference clearly fails to teach or suggest the subsequent steps (b) and (c) wherein the same additional end device synthesizes the decoded multiple signals and places a bitstream representing the synthesized signal on the network.

7. The rejections of claims 30-31 are clearly erroneous for at least the reasons advanced with respect to claim 28.

Withdrawal of the final rejections in view of the above is believed appropriate and therefore respectfully requested.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 08-2025 and please credit any excess fees to such deposit account.

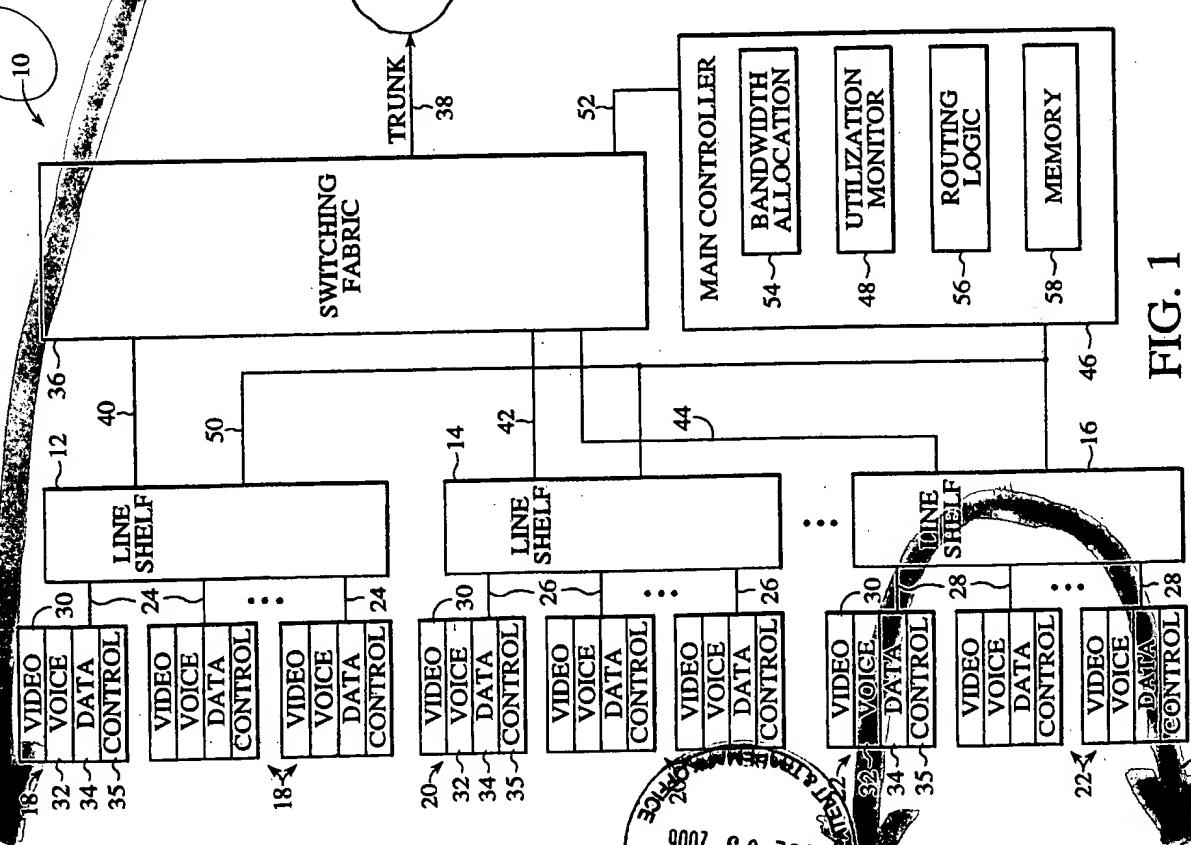
Respectfully submitted,

**LOWE HAUPTMAN & BERNER, LLP**



Kenneth M. Berner  
Registration No. 37,093

USPTO Customer No. 022879  
1700 Diagonal Road, Suite 310  
Alexandria, VA 22314  
(703) 684-1111  
(703) 518-5499 Facsimile  
Date: June 5, 2006



## BEST AVAILABLE COPY

FIG. 1

Exhibit A